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11 FOODS MARKET CALIFORNIA, INC.,  
12 WHOLE FOODS MARKET SERVICES, INC.,  
13 and MRS. GOOCH'S NATURAL FOOD  
14 MARKETS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

15  
16 In re: Subpoena of WHOLE FOODS  
17 MARKET CALIFORNIA, INC., WHOLE  
18 FOODS MARKET SERVICES, INC., and  
19 MRS. GOOCH'S NATURAL FOOD  
MARKETS, INC. to FOOD IN-DEPTH INC.

Case No. 5:24-mc-80123

**NOTICE OF MOTION TO COMPEL  
FOOD IN-DEPTH TO PRODUCE  
DOCUMENTS PURSUANT TO  
PETITIONERS' SUBPOENA;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: July 2, 2024

Time: 10:00 A.M.

Place: 280 South 1st Street, Room 2112  
San Jose, CA 95113

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**NOTICE OF MOTION**

TO THE HONORABLE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 2, 2024 at 10:00 AM, or as soon thereafter as counsel may be heard in United State District Court for the Northern District of California located at 280 South 1st Street, Room 2112, San Jose, CA 95113, petitioners Whole Foods Market California, Inc., Mrs. Gooch's Natural Food Markets, Inc., and Whole Foods Market Services, Inc. (collectively, "Petitioners"), will and hereby do move to compel third party Food In-Depth Inc. ("Food In-Depth") to provide further production of documents in response to Petitioners' subpoena to produce documents (the "Subpoena") issued in the matter *Sara Safari, et al. v. Whole Foods Market Services, Inc., et al.* pending in the United States District Court for the Central District of California (Case No. 8: 22-cv-01562 JWH-KESx) (the "Related Action").

This motion is made pursuant to Federal Rule of Civil Procedure Rules 26 and 45 and Civil Local Rules 7-1, 7-2, and 37-1 through 37-4 on the grounds that Petitioners are entitled to full production of relevant documents in response to their Subpoena and that Food In-Depth has waived its objections by failing to timely serve them. Accordingly, Petitioners seek an order from this Court: (1) transferring this motion to the Central District to avoid the chance of potentially inconsistent rulings; or, in the alternative, (2) holding that Food In-Depth waived objections to the Subpoena; (3) holding that Food In-Depth is not entitled to premature cost-shifting; (4) ruling that Food In-Depth is required to review the files of each of the eight directors and officers publicly listed on its website to locate and produce responsive documents within its possession, custody or control; (5) holding that documents relating to the accuracy of the Food In-Depth Article are relevant and discoverable under the balancing test set forth in Rule 26(b)(1) and must be produced; and (6) ruling that Food In-Depth must produce documents related to its corporate form.

This motion is made following multiple conferences of counsel pursuant to Civil Local Rule 37-1 that took place from January 17, 2024 through May 9, 2024. This motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities and Declaration of David Adams, all other pleadings, papers, records and documentary materials on file in this

1 action and in the Related Action, and such further evidence and argument as the Court may allow at  
2 the hearing on this motion.

3

4 Dated: May 20, 2024

BLAXTER | BLACKMAN LLP

5

6 By:

*/s/ David P. Adams*

7 BRIAN R. BLACKMAN

8 DAVID P. ADAMS

9 Attorneys for Petitioners WHOLE FOODS  
10 MARKET CALIFORNIA, INC., WHOLE FOODS  
11 MARKET SERVICES, INC., and MRS. GOOCH'S  
12 NATURAL FOOD MARKETS, INC.

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# **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

3 Petitioners Whole Foods Market California, Inc. (“WFM CA”), Whole Foods Market  
4 Services, Inc. (“WFM Services”), and Mrs. Gooch’s Natural Food Markets, Inc. (“Mrs. Gooch’s”;  
5 collectively “Petitioners<sup>1</sup>”) move for an order compelling third-party Food In-Depth, Inc. (“Food  
6 In-Depth”) to produce further documents responsive to Petitioners’ subpoena for production of  
7 documents (the “Subpoena”) issued in the matter of *Sara Safari, et al. v. Whole Foods Market*  
8 *Services, Inc., et al.* pending in the United States District Court for the Central District of  
9 California (Case No. 8:22-cv-01562 JWH-KESx) (the “Related Action”).

The Related Action is a false advertising putative class action in which the plaintiffs Peymon Khaghani and Sara Safari (collectively “Plaintiffs”) rely on testing conducted by Food In-Depth to allege that Petitioners falsely promise the beef sold in California Whole Foods Market stores contains no antibiotics. Food In-Depth allegedly conducted its testing at the slaughterhouse of one of Petitioners’ beef suppliers in 2020 and published results from its study in an April 2022 *Science Magazine* article (the “Food In-Depth Article”). Petitioners served a subpoena on Food In-Depth seeking documents and correspondence related to the scope, method and accuracy of the testing conducted and described in the Food In-Depth Article. Food In-Depth has produced a total of 23 pages of documents in response to the Subpoena, while withholding responsive and relevant documents that bear on the article’s scope, method and accuracy. Food In-Depth has done so on the erroneous grounds that these documents are irrelevant, and that it is entitled to have Petitioners pay their estimated cost of review and production before the review is undertaken. Food In-Depth takes this position despite the fact that it has no grounds to withhold documents or request cost shifting because it failed to serve timely objections to Petitioners’ Subpoena. In any event, Food In-Depth’s estimation that it will cost \$74,000 to review 7,400 potentially responsive documents is grossly inflated. Finally, Food In-Depth refused to stipulate to have this matter heard in the Central District despite the fact that having the present motion heard in this Courts risks the

<sup>27</sup> Petitioners are sometimes referred to as “Defendants” herein when sources are quoted, due to the context of this Petition.

1 possibility of inconsistent rulings on key issues or relevance, and Food In-Depth faces no burden  
 2 attending proceedings in the Central District remotely.

## 3           **II. STATEMENT OF ISSUES TO BE DECIDED**

4 Petitioners seek an order from this Court: (1) transferring this motion to the Central  
 5 District to avoid the chance of potentially inconsistent rulings; or, in the alternative, (2) holding  
 6 that Food In-Depth waived all objections to the Subpoena; (3) holding that Food In-Depth is not  
 7 entitled to premature cost-shifting; (4) ruling that Food In-Depth is required to review the files of  
 8 each of the eight directors and officers publicly listed on its website to locate and produce  
 9 responsive documents within its possession, custody or control; (5) holding that documents  
 10 relating to the accuracy of the Food In-Depth Article are relevant and discoverable under the  
 11 balancing test set forth in Rule 26(b)(1) and must be produced; and (6) ruling that Food In-Depth  
 12 must produce documents related to its corporate form.

## 13           **III. BACKGROUND**

### 14           **A. Plaintiffs' Allegations and Case Background.**

15 Plaintiffs in the Related Action allege that Petitioners falsely advertise the beef products  
 16 sold at Whole Foods Market stores in California using the slogan “No Antibiotics Ever.” *See*  
 17 Declaration of David Adams (“Adams Decl.”), Ex. 1 [Second Amended Complaint – ECF No.  
 18 108], ¶2. Plaintiffs rely on two sources of product testing as factual support for their allegations of  
 19 deception. First, Plaintiffs allege that an animal rights organization (and now-dismissed former  
 20 Plaintiff in this action) Farm Forward, conducted testing showing that a single product purchased  
 21 from a Whole Foods Market store in California may have tested positive for antibiotics. Second,  
 22 Plaintiffs rely more heavily on testing conducted by a third-party, respondent Food In-Depth, that  
 23 allegedly shows that cattle destined for sale at Whole Foods Market tested positive for antibiotics:

24           In 2020, Food In Depth (“FoodID”), an independent, third-party,  
 25 testing organization, conducted an extensive antibiotics testing  
 26 program of “raised without antibiotics” cattle at a Slaughterhouse  
 27 One [*sic*], a facility that supplied Whole Foods’ stores in both  
 28 Northern and Southern California during the class period. FoodID’s  
 evidence of antibiotics use in Whole Foods’ Certifier’s beef reveals  
 Whole Foods’ “No Antibiotics, Ever” promise for what it is: a  
 marketing scheme designed to increase profits at the expense of

1 conscientious consumers. The study found that over the seven-  
 2 month testing period, approximately 26% of Whole Foods’  
 3 Certifier’s cattle came from a lot where at least one animal tested  
 4 positive, and 22% of Whole Foods’ Certifier’s cattle came from a  
 5 lot where two animals tested positive for antibiotics. Whole Foods’  
 6 certifying entity and certification program, Global Animal  
 7 Partnership (GAP), was developed by and is used almost exclusively  
 8 by Whole Foods. FoodID’s testing led scientists to suggest that there  
 9 was [sic] *systemic problem* in Whole Foods’ certifying entity’s beef  
 10 supply chain. The results of FoodID’s testing indicate that at least  
 11 one out of every five head of cattle at Slaughterhouse One that were  
 12 in Whole Foods’ certification program had been raised with  
 13 antibiotics. FoodID notified Whole Foods. Both Plaintiffs purchased  
 14 Beef Products from Whole Foods entities that sourced beef from this  
 15 tainted supply chain.

16 Adams Decl., Ex. 1, ¶3; *accord id.* at ¶¶58-62.

17 Based on these allegations, Plaintiffs seek actual damages and restitution in the amount of  
 18 an alleged price premium paid by the putative class for, and/or Petitioners’ profit deriving from,  
 19 all beef purchases at Petitioners’ stores in California during the statutory period. *See* Adams  
 20 Decl., Ex. 1, ¶¶14, 22, 103, 115, 122, 135, 143, 153, and Prayer for Relief at B. Importantly,  
 21 Plaintiffs’ claim for punitive damages is also tethered to their allegations regarding Food In-  
 22 Depth’s conduct because Plaintiffs argue that Petitioners were aware of the alleged presence of  
 23 antibiotics in their supply chain because Food In-Depth shared the results of its antibiotic testing  
 24 with Petitioners in 2020. *See* Adams Decl., Ex. 1, ¶¶2, 67-68, 136-145, and Prayer for Relief at B.

25 **B. Petitioners’ Subpoena to Food In-Depth and the Present Dispute.**

26 Given Plaintiffs’ significant reliance on Food In-Depth’s alleged testing, Petitioners  
 27 drafted the Subpoena to Food In-Depth seeking documents related to Food In-Depth’s testing.  
 28 Adams Decl., ¶3, Ex. 2 [Subpoena]. On January 17, 2024, Food In-Depth’s counsel agreed on a  
 29 telephone call to accept service of the Subpoena. Adams Decl., ¶4, Ex. 3 [Meet-and-Confer Email  
 30 Correspondence] at 37. Over the next four months, the parties embarked on an extensive-meet  
 31 and-confer covering several disputes addressed in the present motion.<sup>2</sup>

32           ///

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33 <sup>2</sup> The summary below condenses the meet-and-confer efforts for brevity’s sake. A more detailed  
 34 recitation of the timeline and parties’ specific communications is contained in the supporting  
 35 Declaration of David Adams.

1       **1. Food In-Depth Obtains Seven Extensions of Time to Produce Documents,**  
 2                   **Then Fails to Abide by Agreements to Produce Documents.**

3       During the parties' extensive meet-and-confer conversations, Petitioners granted no less  
 4 than *seven* extensions of time for Food In-Depth to produce documents. Adams Decl., ¶5, Ex. 3 at  
 5 9-37. Several of these extensions were conditioned on Food In-Depth producing documents for  
 6 which no dispute existed prior to the production deadline as the parties continued to meet-and-  
 7 confer. Adams Decl., ¶5, Ex. 3 at 9, 30-31. Despite these agreements, Food In-Depth produced  
 8 only 23 pages of documents in response to the Subpoena on February 21, 2024, and has otherwise  
 9 failed and refused to abide by its agreement to produce further documents. Adams Decl., ¶5, Ex. 3  
 10 at 30.

11      **2. Food In-Depth Fails to Serve Timely Objections and the Parties Dispute**  
 12                   **Whether Objections are Waived.**

13       Food In-Depth failed to serve objections fourteen days after service of the Subpoena, and  
 14 when the parties met and conferred on February 13, 2024, Petitioners informed Food In-Depth that  
 15 its failure to serve timely objections waived any objections. *See* Adams Decl., ¶6, Ex. 3 at 33, 36.  
 16 While Food In-Depth argued that its deadline to serve objections was implicitly extended when  
 17 Petitioners initially agreed to extend the Subpoena's production date (*Id.* at ¶7, Ex. 3 at 32, 34),  
 18 Petitioners explained that was not the case. *Id.* at ¶8, Ex. 3 at 28.

19       As the parties continued to meet-and-confer, Food In-Depth *still* delayed in serving  
 20 objections to the Subpoena, even after Petitioners explained on February 13, 2024, that Food In-  
 21 Depth's failure to serve timely objections prejudiced Petitioners and hampered meet-and-confer  
 22 efforts. *See* Adams Decl., ¶9, Ex. 3 at 28. Food In-Depth did not serve its objections to the  
 23 Subpoena until March 1, 2024. *Id.*, Ex. 4 [Food In-Depth's Objections]. Importantly, at no point  
 24 in the parties' meet-and-confer did Petitioners express any position other than a good-faith  
 25 willingness to negotiate a reasonable scope of production in response to the Subpoena despite  
 26 Food In-Depth's waiver of objections. *See* Adams Decl., ¶10, Ex. 3 at 33, 36.

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1           **3. Food In-Depth Seeks a Premature, and Improper, Agreement on Cost-**  
 2           **Shifting.**

3           On February 13, 2024, Food In-Depth requested that Petitioners agree to pay Food In-  
 4 Depth for the costs of review before Food In-Depth undertook the review. *See* Adams Decl., ¶11,  
 5 Ex. 3 at 34. In response, Petitioners inquired why Food In-Depth could not simply produce all  
 6 potentially responsive documents to Petitioners to avoid the cost of review. *Id.*, ¶11, Ex. 3 at 21-  
 7 22.

8           On March 21, 2024, Food In-Depth replied and rejected Petitioners' proposal to avoid the  
 9 cost of review and production by producing all potentially responsive documents. *See* Adams  
 10 Decl., ¶12, Ex. 3 at 14. Nonetheless, on March 26, 2024, Petitioners agreed to pay the reasonable  
 11 cost of review after Food In-Depth completed the review and provided information supporting the  
 12 review's cost. *Id.*, ¶12, Ex. 3 at 12. Food In-Depth replied that it would not undertake production  
 13 without Petitioners first agreeing to not challenge the reasonableness of an agreed-upon amount of  
 14 costs (i.e., attorneys' fees) with the understanding that the amount of costs could decrease should  
 15 the review take less time than originally estimated. *Id.*, ¶12, Ex. 3 at 9. Petitioners stated that  
 16 agreeing to a minimum payment amount that was subject to reduction was logically contradictory  
 17 and meaningless, and Petitioners' position was unchanged. *Ibid.* On April 30, 2024, Food In-  
 18 Depth informed Petitioners that it identified 7,400 potentially relevant documents and unless it  
 19 could eliminate potentially duplicative documents from this review set, it would cost roughly  
 20 \$74,000 dollars to review these documents. *Id.* at ¶13.

21           **4. Food In-Depth Seeks to Limit Production of Electronic Files to Certain**  
 22           **Custodians.**

23           Petitioners contend that Food In-Depth should search the electronic files of each officer,  
 24 director, and employee publicly listed on its website: Kevin Lo, Bill Niman, Joel Martin, Scott  
 25 Levitan, Scott Robbin, Dan Denny, Chuck Templeton, and Megan Hanley. Adams Decl., ¶14, Ex.  
 26 3 at 8; Ex 5 [Food In-Depth's Website]. Food In-Depth consented to run searches for responsive  
 27 documents within the files of all these custodians except for Dan Denny, Chuck Templeton, and  
 28

1 Megan Hanley, claiming without providing any supporting facts that “files of Dan Denny, Chuck  
 2 Templeton, and Megan Hanley are either not reasonably accessible or otherwise not in FoodID’s  
 3 possession, custody, or control.” Adams Decl., ¶14, Ex. 3 at 2.

4       **5. Food In-Depth Refuses to Produce Documents Related to the Food In-Depth  
 5 Article’s Accuracy.**

6       Several RFPs in the Subpoena request documents regarding scope, method and accuracy of  
 7 the testing and Food In-Depth Article. *See* Adams Decl., ¶15, Ex. 2, RFP Nos. 3, 5, 6, 11, and 14.  
 8 On the parties’ February 13, 2024 meet-and-confer call, Food In-Depth stated that these RFPs  
 9 were overbroad because communications related to the logistics of publishing the Food In-Depth  
 10 Article were irrelevant. *Id.* at ¶16, Ex. 3, p. 34. After a modest but incomplete production of  
 11 documents on February 21, 2024, Petitioners offered to limit the scope of these RFPs “to exclude  
 12 any communications related to the logistics of publishing the article” but made it clear that  
 13 documents and communications bearing on the accuracy of the article must still be produced. *Id.*  
 14 at ¶17, Ex. 3, p. 28.

15       On March 6, 2024, Food In-Depth shifted its position, and argued that documents related  
 16 to the Food In-Depth Article’s scope, method and accuracy were confidential and burdensome to  
 17 produce. *See* Adams Decl., ¶18, Ex. 3 at 23. Petitioners replied and explained that “Documents  
 18 regarding the peer review process, however, are relevant because they provide insight into the  
 19 validity of FoodID’s testing methods.” *Ibid.* Food In-Depth nonetheless refused to produce  
 20 documents, and insisted the Court resolve the issue. *Id.*, Ex. 3 at 2.

21       **6. Food In-Depth Refuses to Produce Documents Related to its Corporate Form.**

22       On March 6, 2024, a month and a half after the Subpoena was served, Food In-Depth  
 23 informed Petitioners for the first time that it would not produce documents sufficient to understand  
 24 its corporate form in response to RFP No. 51. Adams Decl., ¶19, Ex. 3 at 24. Petitioners  
 25 explained that these documents were necessary because Petitioners have been unable to determine  
 26 Food In-Depth’s corporate form, place of business, or agent for service of process and would need  
 27 this information going forward in this case to ensure it could serve a trial Subpoena. *Id.* Food In-  
 28

1 Depth then agreed to produce documents filed with the Delaware Secretary of State regarding its  
2 corporate form. *Id.*, Ex. 3 at 8. Food In-Depth then reneged on its agreement, refused to produce  
3 further documents, and instead offered to discuss accepting service of the present Subpoena only  
4 (blithely ignoring the fact the Subpoena had already been served). *Id.*, Ex. 3 at 2.

**7. Food In-Depth Refuses to Stipulate to Have This Matter Heard in The Central District.**

Finally, while motions to compel production of documents arising from subpoenas are required to be brought in the district where compliance is required, Petitioners asked Food In-Depth to stipulate to have this motion heard in the Central District where this matter is pending so that the parties could avoid the expense of initiating a new action and having to get a new court educated on this case. *See* Adams Decl., ¶20, Ex. 3 at 4. Food In-Depth refused and provided no grounds for its refusal other than “its residence in the Northern District.” *Id.*, Ex. 3 at 1.

**IV. PETITIONERS' REQUEST TO TRANSFER TO THE CENTRAL DISTRICT**

At the outset, Petitioners request that this Court transfer the present motion to the Central District where the Related Action is being heard. When the court where compliance is required did not issue the subpoena, it may transfer a subpoena-related motion to the issuing court if the nonparty consents or the court finds “exceptional circumstances.” Fed. R. Civ. Proc. 45(f). “The prime concern should be avoiding burdens on local nonparties subject to subpoenas and it should not be assumed that the issuing court is in a superior position to resolve subpoena related motions.” *Id.* at Adv. Comm. Note to 2013. However, transfer may be appropriate “in order to avoid disrupting the issuing court’s management of the underlying litigation, as when that court has already ruled on issues presented by the motion or the same issues are likely to arise in discovery in many districts.” *Ibid.* Courts may ease this burden by allowing the subpoenaed third-party to attend the hearing remotely. *Ibid.*

25 Here, Petitioners have been litigating the Related Action in the Central District for almost  
26 two years and that Court is intimately familiar with the issues presented in this case after having  
27 ruled on a motion to dismiss, a motion for reconsideration on the motion to dismiss, and seven

1 discovery-related motions. Adams Decl., ¶21. Any ruling from this Court regarding the relevance  
 2 of documents bearing on the validity of Plaintiffs' testing, will potentially disrupt the Central  
 3 District's management of this case by ruling on an issue that is likely to arise again in the  
 4 litigation. Importantly, Petitioners will stipulate to hear this motion remotely in the Central  
 5 District to avoid imposing any burdensome travel on Food In-Depth's attorneys.

## 6        **V. DISPUTED ISSUES AND LEGAL ARGUMENT**

### 7        **A. Legal Standard on Motion to Compel Subpoena Compliance.**

8            "At any time, on notice to the commanded person, the serving party may move the court  
 9 for the district where compliance is required for an order compelling production or inspection."  
 10 Fed. R. Civ. Proc. 45(d)(B)(i).

11           Should this Court decline to transfer the present motion to the Central District, Petitioners  
 12 request that the Court grant their motion to compel on the following issues.

### 13        **B. Food In-Depth Waived All Objections.**

14           At the outset, the Court should grant Petitioners' motion because Food In-Depth waived all  
 15 objections to Petitioners' Subpoena by failing to timely object. Federal Rule of Civil Procedure  
 16 45(d)(2)(B) states:

17           A person commanded to produce documents or tangible things or to  
 18 permit inspection may serve on the party or attorney designated in  
 19 the subpoena a written objection to inspecting, copying, testing, or  
 20 sampling any or all of the materials or to inspecting the premises--  
 21 or to producing electronically stored information in the form or  
 22 forms requested. **The objection must be served before the earlier  
 23 of the time specified for compliance or 14 days after the  
 24 subpoena is served.**

25 Fed. R. Civ. P. § 45(d)(2)(B) (emphasis added). "A nonparty's failure to timely make objections  
 26 to a Rule 45 subpoena duces tecum generally requires the court to find that any objections have  
 27 been waived." *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005); *accord*  
*Schoonmaker v. City of Eureka*, No. 17-CV-06749-VC (RMI), 2018 WL 5829851, at \*1 (N.D.  
 28 Cal. Nov. 7, 2018).

29        ///

1 Petitioners served Food In-Depth with the Subpoena on January 17, 2024. *See* Adams  
 2 Decl., ¶4, Ex. 3 at 37. Any objections to the Subpoena or its individual document requests were  
 3 due fourteen days later, i.e., January 31, 2024. Fed. R. Civ. P. § 45(d)(2)(B). Food In-Depth did  
 4 not serve any objections by the deadline. *See*, Adams Decl., ¶¶6-9, Ex. 4. When confronted with  
 5 this fact, Food In-Depth claimed its deadline to serve objections was implicitly extended when  
 6 Petitioners initially agreed to extend the Subpoena's production date to February 21, 2024. *Id.*, ¶7,  
 7 Ex. 3 at 32, 34. Petitioners, however, had not agreed to extend Food In-Depth's objection  
 8 deadline. *Id.*, ¶8, Ex. 3 at 28. The deadline to object is calculated based on the date the Subpoena  
 9 is *served*, not on the date of compliance. Fed. R. Civ. P. § 45(d)(2)(B). Thus, Petitioners'  
 10 agreement to extend the production deadline did not affect Food In-Depth's deadline to serve its  
 11 objections. *Ibid.* Regardless, even under Food In-Depth's own interpretation of Rule 45, Food In-  
 12 Depth further waived its objections by not serving them until March 1, 2024 – over a week after  
 13 its February 21, 2024 production date, and over two weeks after Petitioners initially informed  
 14 them of their waiver. *Id.*

15 Food In-Depth will likely argue that “[i]n unusual circumstances and for good cause, ...  
 16 the failure to act timely will not bar consideration of objections [to a Rule 45 subpoena].’  
 17 [Citations]. Courts have found unusual circumstances where, for instance, the subpoena is  
 18 overbroad on its face and exceeds the bounds of fair discovery and the subpoenaed witness is a  
 19 non-party acting in good faith.” *Moon*, 232 F.R.D. at 636, quoting *McCoy v. Southwest Airlines  
 20 Co., Inc.*, 211 F.R.D. 381, 385 (C.D.Cal.2002). “Unusual circumstances” do not exist in this case  
 21 for two reasons: (1) Food In-Depth has not acted in good faith to produce documents in this matter  
 22 and (2) the Subpoena, as discussed Sections V.D-V.F below, is not overly broad and does not  
 23 exceed the bounds of fair discovery.

24 Food In-Depth’s failure to act in good faith in response to the Subpoena is evident in  
 25 several respects. First, Food In-Depth waited over a month to serve objections after they were  
 26 due. Adams Decl. at Ex. 4. This significantly impaired the parties’ meet-and-confer efforts, as  
 27 Petitioners pointed out to Food In-Depth, because it prevented Petitioners from ascertaining the  
 28

1 scope of the parties' disputes regarding production, delayed resolution of those disputes, and  
 2 prejudicing Petitioners' ability to effectively gather evidence to mount their defense in the Related  
 3 Action.

4       Second, despite receiving *seven* extensions of time to produce documents, Food In-Depth  
 5 ultimately produced only 23 pages. *Id.*, ¶5. This is the company whose "testing" is the  
 6 cornerstone of Plaintiffs' factual basis for bring the Related Action. Food In-Depth also withheld  
 7 responsive documents in the custody of its Executive Chairman Kevin Lo (an agreed custodian in  
 8 this matter), despite Petitioners conditioning several extensions of Food In-Depth's time to  
 9 produce documents on its agreement to make rolling productions from Mr. Lo's files. *Id.*, ¶5, Ex.  
 10 3 at 9.

11       Finally, in contrast to Food In-Depth's conduct, Petitioners have worked in good faith to  
 12 find an agreed scope of production to reduce any burden on Food In-Depth. Petitioners even  
 13 offered to pay Food In-Depth's reasonable costs of production upon proof thereof, despite the fact  
 14 that Food In-Depth waived all such rights by failing to timely object to the Subpoena. Adams  
 15 Decl., ¶12, Ex. 3 at 12.

16       Ultimately, Food In-Depth's failure to serve timely objections, and bad-faith failure to  
 17 comply with its discovery obligations waived its right to dispute *any* of the issues in this motion.  
 18 Food In-Depth's failure was not a mere technicality. Its objections were not served a day late.  
 19 They were served a month late, and weeks after the issue was brought to Food In-Depth's  
 20 attention and the parties had initiated a meet-and-confer process. Petitioners were prejudiced as a  
 21 result. The clear text of Rule 45 shows that the deadline to serve objections was set by the date of  
 22 service, not the production date (which Petitioners extended numerous times as a courtesy). Thus,  
 23 this Court should grant Petitioners' motion in its entirety because Food In-Depth has waived all  
 24 objections to the Subpoena.

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1      **C. Food In-Depth Is Not Entitled to Cost Shifting.**

2      The Ninth Circuit has held “that [Federal Rule of Civil Procedure] 45(d)(2)(B)(ii) requires  
 3      the district court to shift a non-party’s costs of compliance with a subpoena, if those costs are  
 4      significant.” *Legal Voice v. Stormans Inc.*, 738 F.3d 1178, 1184 (9th Cir. 2013).

5      Food In-Depth contends that Petitioners must pay for its cost of review, including its  
 6      attorneys’ fees, in advance and without first determining the actual reasonable cost of review.  
 7      This position fails for multiple reasons: (1) Food In-Depth’s estimated cost of review is grossly  
 8      inflated, and speculative; (2) Food In-Depth’s failure to serve timely objections waived its ability  
 9      to request cost shifting; (3) Food In-Depth’s unique position as a third-party in the Related Action  
 10     weights against cost shifting here; and (4) Food In-Depth has rejected common-sense  
 11     compromises that would entirely negate these costs. While Petitioners initially agreed to pay the  
 12     reasonable cost of Food In-Depth’s review and production, in light of the forgoing factors  
 13     Petitioners now seek a ruling from the Court denying cost shifting altogether.

14      **1. Food In-Depth’s Estimated Cost is Inflated and Speculative.**

15      Food In-Depth demands Petitioners pay a fixed minimum amount of \$74,000.00 to review  
 16     and produce 7,400 potentially responsive documents from five of eight custodians, but then offers  
 17     to adjust this cost down if the review takes less time than anticipated. Food In-Depth’s proposal is  
 18     logically unsound, and its estimated cost inflated.

19      First, as explained by Petitioners during the parties’ meet-and-confer, Food In-Depth’s  
 20     proposal for Petitioners to agree to pay a minimum amount of Food In-Depth’s review cost that is  
 21     subject to downward adjustment makes no sense. A minimum that is subject to downward  
 22     adjustment is, definitionally, not a minimum. An agreement to pay such a “minimum” would be  
 23     illusory and unenforceable.

24      Regardless, fighting about the reasonableness of estimated costs is a purely speculative  
 25     exercise. Once the review is undertaken, the parties and Court (if necessary), will be in a position  
 26     to actually judge the reasonableness of the cost of the review. *United States v. McGraw-Hill  
 27     Companies, Inc.*, 302 F.R.D. 532, 537 (C.D. Cal. 2014) (denying third-party’s request for  
 28

1 subpoena cost shifting until “after documents have been produced and a meaningful record has  
 2 been established, [at which point] the Court will review motions for cost-shifting from the non-  
 3 parties.”). Requiring Petitioners to pay any amount of costs before the review is undertaken is  
 4 thus improper and could potentially result in a windfall for Food In-Depth. *Ibid.*

5 Second, Food In-Depth’s proposed \$74,000 in attorneys’ fees is grossly inflated and  
 6 disproportionate to the likely actual cost of review for several reasons. To begin with, courts have  
 7 held that the cost of retaining outside counsel to review documents for privilege and  
 8 confidentiality are not recoverable costs for third parties responding to discovery. *United States v.*  
 9 *CBS, Inc.*, 103 F.R.D. 365, 374 (C.D. Cal. 1984) (“The Nonparty Witnesses will not be allowed to  
 10 recover the costs incurred in retaining outside counsel.”). Even if this Court were to consider  
 11 attorneys’ fees a legitimate cost, \$74,000 is in stark contrast to the costs Petitioners were quoted  
 12 for a recent document review undertaken in the Related Action in which a discovery vendor  
 13 estimated the cost to review 86,303 documents at \$127,258. Adams Decl., ¶13. That works out to  
 14 \$1.47 per document. By contrast, Food-In-Depth’s estimated cost to review a mere 7,400  
 15 documents works out to \$10 per document.

16 **2. Food In-Depth’s Failure to Serve Timely Objections Waived its Ability to**  
**Request Cost Shifting.**

18 Under Federal Rule of Civil Procedure 45 – the rule on which the Ninth Circuit’s holding  
 19 in *Legal Voice* that “significant costs” must be shifted from subpoenaed third-parties is based –  
 20 cost shifting is available only “[i]f an objection is made.” Fed. R. Civ. P. 45(d)(2)(B) (emphasis  
 21 added). Thus, under the plain language of Rule 45, the Court’s power to issue an order requiring  
 22 cost shifting is only invoked upon service of an effective objection made under Rule 45(d)(2)(B).  
 23 As explained in Section V.B of this brief, Food In-Depth failed to serve timely objections to the  
 24 Subpoena. Accordingly, Food In-Depth is not entitled to cost shifting.

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1           **3.       Food In-Depth's Unique Position as an Interested Third-Party in This Case**  
 2           **Weighs Against Cost Shifting.**

3           In determining whether a third-party incurs significant expense in complying with a  
 4 subpoena, “Courts also consider whether the nonparty has an interest in the outcome of the  
 5 underlying case.” *Cornell v. Columbus McKinnon Corp.*, No. 13-cv-02188-SI, 2015 WL  
 6 4747260, at \*3, 5 (N.D. Cal. Aug. 11, 2015). “Rule 45’s cost-shifting provision “was not intended  
 7 as a mechanism for entities which stand to benefit from certain litigation outcomes to evade  
 8 discovery costs arising from their involvement in the underlying acts that gave rise to the lawsuit.”  
 9 *Id.* at \*5, citing *Tutor–Saliba Corp. v. United States*, 32 Fed.Cl. 609, 610, nt. 5 (1995) (noting that  
 10 the nonparty at issue, unlike many nonparties, was “substantially involved in the underlying  
 11 transaction and could have anticipated that [its involvement might] reasonably spawn some  
 12 litigation, and discovery”)).

13           Here, not only did publication of the Food In-Depth Article directly set in motion the chain  
 14 of events leading to the Related Action, but Food In-Depth’s testing and article are the pivotal  
 15 pieces of evidence used by Plaintiffs to support their allegations that Petitioners’ “No Antibiotics  
 16 Ever” statements are false or misleading. A comparison of the two bodies of testing allegations in  
 17 Plaintiffs’ operative complaint shows Plaintiffs rely far more on Food In-Depth’s testing (seven  
 18 months of testing involving 699 head of cattle purporting to show 15% of Petitioners’ cattle came  
 19 from lots testing positive for antibiotics) than they do on the testing conducted by Farm Forward  
 20 (finding one single product purchased from a California Whole Foods Market allegedly contained  
 21 antibiotics). *Compare* Adams Decl., Ex. 1, ¶¶58-62; with *Id.* at ¶¶63-66. Simply put, Food In-  
 22 Depth generated the key allegations in Plaintiffs’ Complaint in the Related Action, and did so  
 23 freely and in pursuit of its own interests and goals. The Related Action followed as a result, and  
 24 Food In-Depth cannot retain the benefits and acclaim arising from its freely taken and self-  
 25 interested actions, while discounting the foreseeable consequences.

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1           **4. Food In-Depth Rejected Common-Sense Compromises That Would Entirely**  
 2           **Negate Its Claimed Costs.**

3           “[O]ne thing is certain: an unreasonably incurred expense is not an expense “resulting from  
 4 compliance [with a subpoena].” *McGraw-Hill Companies, Inc.*, 302 F.R.D. at 536, citing to  
 5 *Michael Wilson & Partners, Ltd. v. Sokol Holdings, Inc. (In re Michael Wilson & Partners, Ltd.)*,  
 6 520 Fed. Appx. 736, 741 (10th Cir. 2013). “In other words, Rule 45 does not cut a blank check to  
 7 non-parties—unnecessary or unduly expensive services do not “result from compliance” and,  
 8 therefore, do not count as “expenses.” *Id.* at 536. Specifically, attorneys’ fees that are  
 9 unnecessary because they are “for the non-party’s sole benefit and peace of mind” are not  
 10 reasonable and recoverable. *Ibid.*

11          During the parties’ meet and confer on March 6, 2024, Petitioners suggested that Food In-  
 12 Depth could entirely avoid incurring any costs associated with reviewing potentially responsive  
 13 documents if it simply turned over all potentially responsive documents to Petitioners. Adams  
 14 Decl., ¶11, Ex. 3 at 21-22. Unlike party discovery, where potentially sensitive privileged and  
 15 confidential information could damage a party’s interests by falling into the hands of a litigation  
 16 adversary, here these considerations do not apply to Food In-Depth, a third party. Further, any  
 17 confidentiality concerns Food In-Depth may have can be addressed through the stipulated  
 18 protective order entered in the Related Action. Adams Decl., ¶22, Ex. 7 [Stipulated Protective  
 19 Order]. Food In-Depth, however, rejected this proposal and did not articulate any specific  
 20 argument against such disclosure in response to Petitioners’ proposition. *Id.* at ¶12, Ex. 3, p. 14.  
 21 Accordingly, any costs incurred by Food In-Depth associated with this review are not necessary,  
 22 purely for Food In-Depth’s sole benefit and peace of mind, and therefore not reasonable.  
 23 Petitioners should not be required to pay for any such costs.

24          **D. The Court Should Order a Production From All Custodians of Electronic Discovery.**

25          Food In-Depth is obligated to produce documents within its possession, custody, or  
 26 control. Fed. R. Civ. P. 45(a)(1)(A)(iii). Courts have held that the electronic files of officers and  
 27

28

1 directors of a company are discoverable under this standard. *Env't World Watch, Inc. v. The Walt*  
 2 *Disney Co.*, No. CV094045DMGPLAX, 2011 WL 13124125, at \*4 (C.D. Cal. Nov. 3, 2011).

3 Petitioners contend that Food In-Depth should search the electronic files of each officer,  
 4 directors, and employee publicly listed on its website: Kevin Lo, Bill Niman, Joel Martin, Scott  
 5 Levitan, Scott Robbin, Dan Denny, Chuck Templeton, and Megan Hanley. Adams Decl., ¶14, Ex.  
 6 5 [Food In-Depth's Website]. Food In-Depth has consented to run searches for responsive  
 7 documents within the files of all these custodians except for Food In-Depth's Co-Founder and  
 8 Chief Scientist Dan Denny, and board members Chuck Templeton, and Megan Hanley. *Id.* at ¶14.

9 As Petitioners explained during the parties' meet-and-confer, however, the fact that Dan  
 10 Denny, Chuck Templeton, and Megan Hanley are not Food In-Depth employees is immaterial.  
 11 Petitioners have provided prima facie evidence that these individuals are affiliated with Food In-  
 12 Depth by virtue of their listed positions on Food In-Depth's website, and Food In-Depth has  
 13 provided no evidence to the contrary.

14 **E. Documents Related to the Accuracy of the Food In-Depth Article.**

15 Petitioners contend that they are entitled to obtain a full and complete production of  
 16 documents related to the accuracy of the Food In-Depth Article responsive to RFP Nos. 3, 5, 6, 11,  
 17 and 14. Per Northern District Local Rule 37-2, Petitioners set forth each contested request, and  
 18 Food In-Depth's objection below followed by Petitioners' arguments in favor of production.

19 **1. Request for Production No. 14.**

20 **a. Petitioners' Requests and Food In-Depth's Objections.**

21 **REQUEST NO. 14:** All DOCUMENTS and COMMUNICATIONS RELATING TO any  
 22 peer review of YOUR ANTIBIOTICS TESTING on and/or testing results from CREEKSTONE  
 23 CATTLE.

24 **RESPONSE TO REQUEST NO. 14:** FoodID objects to this Request as it relies on the  
 25 burdensome and overly broad definitions of YOUR and CREEKSTONE CATTLE; FoodID  
 26 interprets these terms as described above. FoodID objects to this Request on the grounds that it is  
 27 overbroad, unduly burdensome, and not proportional to the needs of the case. FoodID objects to  
 28

1 this Request to the extent it seeks information not relevant to the claims or defenses of any party,  
 2 not reasonably calculated to lead to the discovery of admissible evidence, or otherwise not within  
 3 the scope of relevant discovery. FoodID objects to this Request to the extent that it calls for the  
 4 production of documents or things that are protected by the attorney-client privilege, the attorney  
 5 work product doctrine, or any similar privilege or immunity. FoodID objects to the extent the  
 6 Request seeks information that violates her and/or third parties' right to privacy. FoodID objects to  
 7 this Request to the extent it seeks documents that have already been produced in this action.

8       Subject to and without waiving the foregoing objections, FoodID responds as follows:  
 9 FoodID directs Defendants to the documents with the bates stamp bearing NIMAN009-018, which  
 10 contain responsive documents containing supplementary materials attached to the APRIL 2022  
 11 SCIENCE MAGAZINE ARTICLE and describing the materials and methods for the testing  
 12 conducted by FoodID related to the APRIL 2022 SCIENCE MAGAZINE ARTICLE.

13           **b. The Court Should Order Food In-Depth to Produce All Responsive  
 14 Documents.**

15       While Food In-Depth's response above directs Petitioners to some documents nominally  
 16 responsive to this request, the parties' meet-and-confer makes clear that Food In-Depth withheld a  
 17 substantial number of responsive documents on the grounds that information regarding the peer  
 18 review process, and correspondence with the Food In-Depth Article's authors regarding the article,  
 19 is allegedly confidential and burdensome to produce. Adams Decl., ¶18, Ex. 3, p. 23. Federal  
 20 Rule of Civil Procedure 26 states:

21           Parties may obtain discovery regarding any nonprivileged matter  
 22 that is relevant to any party's claim or defense and proportional to  
 23 the needs of the case, considering the importance of the issues at  
 24 stake in the action, the amount in controversy, the parties' relative  
 25 access to relevant information, the parties' resources, the importance  
 26 of the discovery in resolving the issues, and whether the burden or  
 27 expense of the proposed discovery outweighs its likely benefit.

28 Fed. R. Civ. Pro. § 26(b)(1).

Information regarding the validity of Food In-Depth's testing, and the peer review process  
 conducted with regards to the Food In-Depth Article, is crucial to Petitioners' defense in the

1 Related Action and discoverable under the balancing factors set forth in Rule 26(b)(1). First, as  
 2 explained above, Plaintiffs' allegations of falsity and deception rest almost entirely on the validity  
 3 of this testing and their discussion in the Food In-Depth Article. Adams Decl., Ex. 1, ¶¶3, 58-62.  
 4 Thus, information bearing on the validity of this testing – such as how this testing was vetted  
 5 during the scientific peer review process – is pivotal to Petitioners' defense.

6 Second, this discovery is proportional considering the importance of the issues at stake in  
 7 the Related Action and the amount in controversy. Whole Foods Market has consistently  
 8 promised customers for over 40 years that its beef contains "No Antibiotics, Ever." Adams Decl.,  
 9 Ex. 1, ¶¶39-52. Petitioners take this promise seriously and take pride in their reputation as a  
 10 trusted retailer of quality antibiotic-free beef products. Plaintiffs' allegations of duplicity are  
 11 therefore serious, and Petitioners are entitled to obtain relevant evidence bearing on their truth so  
 12 that they can effectively defend their brand reputation, and defend against the significant damages  
 13 Plaintiffs allege they are entitled to in the Related Action. Adams Decl., Ex. 1, ¶¶14, 22, 103, 115,  
 14 122, 135, 143, 153, and Prayer for Relief at B.

15 Third, Petitioners have no access to the information requested regarding peer review other  
 16 than through their subpoena power. This factor weighs in favor of disclosure.

17 Fourth, any concerns Food In-Depth may have regarding the burden of production will be  
 18 addressed by the Court's ruling on cost shifting, and the confidentiality of responsive documents  
 19 may be preserved by designating responsive documents as confidential under the stipulated  
 20 protective order entered in the Related Action. Adams Decl., ¶22, Ex. 7.

21 In short, there are no grounds for withholding responsive documents regarding the peer  
 22 review process, and this Court should issue an order compelling Food In-Depth to produce  
 23 responsive documents. To deny Petitioners discovery into this matter would be to allow any  
 24 plaintiff to simply coordinate with a third-party to generate allegations supporting a complaint,  
 25 then allow the plaintiff to walk into trial with their theory of the case untested by discovery or  
 26 cross-examination after the defendant is denied discovery from the third-party. This would be an  
 27 untenable result running contrary to the principles of fair discovery in our judicial system.

1           **2. Request for Production No. 3.**

2           **a. Petitioners' Requests and Food In-Depth's Objections.**

3           **REQUEST NO. 3:** All COMMUNICATIONS between YOU and SCIENCE  
 4 MAGAZINE RELATING TO the APRIL 2022 SCIENCE MAGAZINE ARTICLE.

5           **RESPONSE TO REQUEST NO. 3:** FoodID objects to this Request as it relies on the  
 6 burdensome and overly broad definitions of YOU and SCIENCE MAGAZINE; FoodID interprets  
 7 these terms as described above. FoodID objects to this Request to the extent it seeks information  
 8 not relevant to the claims or defenses of any party, not reasonably calculated to lead to the  
 9 discovery of admissible evidence, or otherwise not within the scope of relevant discovery,  
 10 particularly as FoodID had extensive communications with SCIENCE MAGAZINE relating to the  
 11 APRIL 2022 SCIENCE MAGAZINE ARTICLE concerning topics ancillary to the substance of  
 12 the APRIL 2022 SCIENCE MAGAZINE ARTICLE. FoodID objects to this Request to the extent  
 13 that it calls for the production of documents or things that are protected by the attorney-client  
 14 privilege, the attorney work product doctrine, or any similar privilege or immunity. FoodID  
 15 objects that this Request is overbroad, unduly burdensome, and not proportional to the needs of  
 16 the case to the extent that it seeks information that is proprietary trade secret or confidential or  
 17 competitively sensitive and is not relevant to this litigation. FoodID objects to this Request to the  
 18 extent that it seeks confidential and/or trade secret information of a third-party, and which FoodID  
 19 is obligated to maintain as confidential information.

20           **b. The Court Should Order Food In-Depth to Produce All Responsive  
 21 Documents.**

22           Food In-Depth refuses to locate and produce documents responsive to RFP No. 3,  
 23 contending that many communications between itself and *Science Magazine* would not be  
 24 substantive or relevant, and those that might be substantive involve the peer review process and  
 25 are confidential. Adams Decl., ¶18, Ex. 3, p. 23. Petitioners offered the following to limit the  
 26 scope of the request to exclude non-substantive communications regarding logistics. *Ibid.* Food  
 27 In-Depth declined Petitioners' offer and refused to produce any responsive communications.  
 28

1       As explained in the previous sections, communications between Food In-Depth and  
 2 *Science Magazine* bearing on the validity of Food In-Depth's testing are highly relevant to the  
 3 Related Action and are therefore discoverable under the balancing test set forth in Rule 26(b)(1).  
 4 Petitioners are entitled to discover information that bears on the credibility of the key evidence  
 5 Plaintiffs use to support their allegations of falsity in the false advertising case. Petitioners stand  
 6 by their reasonable offer to limit the scope of this RFP to exclude non-substantive  
 7 communications about formatting, scheduling calls, costs etc. Food In-Depth, however, must  
 8 produce communications that bear on the substance of the article.

9       Food In-Depth's burden and confidentiality objections lack merit. Neither objection  
 10 weighs against production because the validity of the burden will be addressed by this Court's  
 11 ruling on cost shifting, and confidentiality concerns can be addressed by the stipulated protective  
 12 order entered in the Related Action. Adams Decl., ¶22, Ex. 7.

13       **3. Request for Production No. 5.**

14       **a. Petitioners' Requests and Food In-Depth's Objections.**

15       **REQUEST NO. 5:** All COMMUNICATIONS between YOU and Lance B. Price and/or  
 16 Laura Rogers or their agents RELATED TO the APRIL 2022 SCIENCE MAGAZINE ARTICLE.

17       **RESPONSE TO REQUEST NO. 5:** FoodID objects to this Request as it relies on the  
 18 burdensome and overly broad definition of YOU; FoodID interprets this terms as described above.  
 19 FoodID objects to this Request on the grounds that it is overbroad, unduly burdensome, and not  
 20 proportional to the needs of the case because it seeks "All COMMUNICATIONS between YOU  
 21 and Lance B. Price and/or Laura Rogers or their agents RELATED TO the APRIL 2022  
 22 SCIENCE MAGAZINE ARTICLE," which would include an extensive number of documents,  
 23 particularly as Lance B. Price and Laura Rogers are coauthors on the APRIL 2022 SCIENCE  
 24 MAGAZINE ARTICLE and thus exchanged many documents with FoodID regarding topics  
 25 ancillary to the substance of the APRIL 2022 SCIENCE MAGAZINE ARTICLE. FoodID objects  
 26 to this Request to the extent it seeks information not relevant to the claims or defenses of any  
 27 party, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise not  
 28

1 within the scope of relevant discovery. FoodID objects to the extent the Request seeks information  
 2 that violates third parties' right to privacy. FoodID objects that this Request is overbroad, unduly  
 3 burdensome, and not proportional to the needs of the case to the extent that it seeks information  
 4 that is proprietary trade secret or confidential or competitively sensitive and is not relevant to this  
 5 litigation.

6                   **b. The Court Should Order Food In-Depth to Produce All Responsive  
 7 Documents.**

8                   The parties' positions with respect to RFP No. 5 are identical to those discussed with  
 9 regard to RFP No. 3 above. Adams Decl. Ex. 3, ¶18, p. 23. Petitioners contend that  
 10 communications between Food In-Depth and Lance B. Price and/or Laura Rogers, the co-authors  
 11 of the Food In-Depth Article, are relevant and discoverable because they bear on the validity of  
 12 the article's findings. These findings are the key evidence used by Plaintiffs to support their  
 13 allegations in the Related Action, and Petitioners are entitled to this discovery. Food In-Depth  
 14 must produce responsive documents under the balancing factors set forth in Rule 26(b)(1). Any  
 15 concerns regarding burden will be addressed by this Court's ruling on cost shifting, and  
 16 confidentiality concerns can be addressed by the stipulated protective order.

17                  **4. Request for Production No. 6.**

18                  **a. Petitioners' Requests and Food In-Depth's Objections.**

19                  **REQUEST NO. 6:** All YOUR internal COMMUNICATIONS RELATING TO the  
 20 APRIL 2022 SCIENCE MAGAZINE ARTICLE.

21                  **RESPONSE TO REQUEST NO. 6:** FoodID objects to this Request as it relies on the  
 22 burdensome and overly broad definition of YOUR; FoodID interprets this terms as described  
 23 above. FoodID objects to this Request to the extent it seeks information not relevant to the claims  
 24 or defenses of any party, not reasonably calculated to lead to the discovery of admissible evidence,  
 25 or otherwise not within the scope of relevant discovery. FoodID objects to this Request to the  
 26 extent that it calls for the production of documents or things that are protected by the attorney-  
 27 client privilege, the attorney work product doctrine, or any similar privilege or immunity. FoodID  
 28

1 objects to this Request to the extent it seeks documents that have already been produced in this  
 2 action, documents that have been requested from parties to this action, or documents that can  
 3 easily or more properly be obtained from parties to this action. FoodID objects that this Request is  
 4 overbroad, unduly burdensome, and not proportional to the needs of the case to the extent that it  
 5 seeks information that is proprietary trade secret or confidential or competitively sensitive and is  
 6 not relevant to this litigation.

7                   **b. The Court Should Order Food In-Depth to Produce All Responsive  
 8 Documents.**

9 Petitioners' position with respect to RFP No. 6 is identical to that discussed with regards to  
 10 RFP Nos. 3, and 5 above.

11                  **5. Request for Production No. 11.**

12                  **a. Petitioners' Requests and Food In-Depth's Objections.**

13                  **REQUEST NO. 11:** All COMMUNICATIONS between YOU and Lance B. Price and/or  
 14 Laura Rogers or their agents RELATING TO YOUR ANTIBIOTICS TESTING of  
 15 CREEKSTONE CATTLE.

16                  **RESPONSE TO REQUEST NO. 11:** FoodID objects to this Request as it relies on the  
 17 burdensome and overly broad definitions of YOU and CREEKSTONE CATTLE; FoodID  
 18 interprets these terms as described above. FoodID objects to this Request on the grounds that it is  
 19 overbroad, unduly burdensome, and not proportional to the needs of the case because it seeks "All  
 20 COMMUNICATIONS between YOU and Lance B. Price and/or Laura Rogers or their agents  
 21 RELATING TO YOUR ANTIBIOTICS TESTING of CREEKSTONE CATTLE," which would  
 22 include an extensive number of documents, particularly as Lance B. Price and Laura Rogers are  
 23 coauthors on the APRIL 2022 SCIENCE MAGAZINE ARTICLE and thus exchanged many  
 24 documents with FoodID regarding topics ancillary to the substance of the APRIL 2022 SCIENCE  
 25 MAGAZINE ARTICLE. FoodID objects to this Request to the extent it seeks information not  
 26 relevant to the claims or defenses of any party, not reasonably calculated to lead to the discovery  
 27 of admissible evidence, or otherwise not within the scope of relevant discovery. FoodID objects  
 28

1 that this Request is overbroad, unduly burdensome, and not proportional to the needs of the case to  
 2 the extent that it seeks information that is proprietary trade secret or confidential or competitively  
 3 sensitive and is not relevant to this litigation.

4                   **b. The Court Should Order Food In-Depth to Produce All Responsive**  
 5                   **Documents.**

6 Petitioners' position with respect to RFP No. 11 is identical to that discussed with regards  
 7 to RFP Nos. 3, 5, and 6 above.

8 **F. Documents Related to Food In-Depth's Corporate Form.**

9 Petitioners contend that they are entitled to obtain a full and complete production of  
 10 documents related to Food In-Depth's corporate form responsive to RFP No. 51. Per Northern  
 11 District Local Rule 37-2, Petitioners set forth the contested request, and Food In-Depth's objection  
 12 below followed by Petitioners' argument in favor of production.

13                   **1. Request for Production No. 51.**

14                   **a. Petitioners' Requests and Food In-Depth's Objections.**

15                   REQUEST NO. 51: DOCUMENTS sufficient to understand YOUR corporate form and  
 16 mission.

17                   RESPONSE TO REQUEST NO. 51: FoodID objects to this Request as it relies on the  
 18 burdensome and overly broad definition of YOUR; FoodID interprets this term as described above.  
 19 FoodID objects to this Request to the extent it seeks information not relevant to the claims or defenses  
 20 of any party, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise  
 21 not within the scope of relevant discovery. FoodID objects to this Request to the extent that it calls for  
 22 the production of documents or things that are protected by the attorney-client privilege, the attorney  
 23 work product doctrine, or any similar privilege or immunity.

24                   Subject to and without waiving the foregoing objections, FoodID responds as follows: FoodID  
 25 directs Defendants to FoodID's website, available at <https://www.foodid.com/>, which contains  
 26 responsive documents regarding its mission.

27                   ///

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**b. The Court Should Order Food In-Depth to Produce All Responsive Documents.**

3 Food In-Depth agreed to produce documents related to its corporate form, then reneged on  
4 this agreement and now refuses to produce such documents. Adams Decl., ¶51, Ex. 3, p. 2, 8.  
5 Food In-Depth claims to be located in the Northern District of California. *Id.*, ¶20. It, however,  
6 does not appear on the California Secretary of State's website as having qualified to do business in  
7 California under that name, nor has it filed a DBA in any of the Bay Area counties. *Ibid.* Thus,  
8 Petitioners need these corporate documents to: (1) determine if Food In-Depth is incorporated  
9 under a different name, (2) determine if it failed to qualify to conduct business in California, (3)  
10 locate an officer, director or other person competent to receive service of deposition and trial  
11 subpoenas, and (4) understand its mission and goals (which are relevant to its motivations in  
12 testing cattle in the first place). While Food In-Depth appears on the Delaware Secretary of State  
13 website, that listing does not show an agent for service of process. Adams Decl., ¶19, Ex. 6.  
14 [Delaware Secretary of State Entity Details for Food In-Depth]. Petitioners are entitled to these  
15 relevant and discoverable documents and Food In-Depth has not provided any argument as to why  
16 it refuses to produce them.

## **VI. CONCLUSION**

For the reasons set forth herein, Petitioners request that this Court transfer the present motion to the Central District, or, in the alternative, grant the substantive relief requested in the present motion in its entirety.

21 | Dated: May 20, 2024

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By /s/ David P. Adams

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